

AG Contract No.: KR04-1512TRN  
ADOT ECS File No.: JPA 04-105  
TRACS: H6348 01C  
Project No.: TEA 010-E(008)A  
Section: 6th Avenue & I10  
Budget Source Item No.: 21606  
**City of Tucson Contract No: 0429-05**  
**City of Tucson Resolution No. 20015**

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITIES OF SOUTH TUCSON AND TUCSON

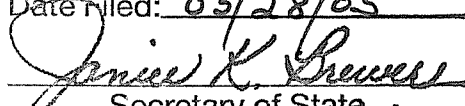
**THIS AGREEMENT** is entered this date 28th of March, 2005, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITIES OF SOUTH TUCSON and TUCSON, acting by and through its MAYOR and CITY COUNCIL, (the "Cities").

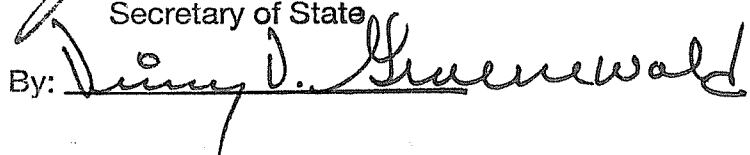
### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.
2. The Cities is empowered by Arizona Revised Statutes Section 48-572 to enter into this Agreement and has by resolution a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Cities.
3. Congress has authorized appropriations for, but not limited to, the twelve eligible transportation enhancement provisions.
4. The State will construct a 10 foot sidewalk and replace the chain link with an aesthetically enhanced fence along 6th Avenue Bridge and the I-10 using State and Federal funding, hereinafter referred to as the "Project". The City of South Tucson will be responsible for the maintenance and repair of the sidewalks north of the I-10 / Sixth Avenue Bridge and the City of Tucson will be responsible for maintenance and repair of the sidewalks south of the I-10 / Sixth Avenue Bridge.

**THEREFORE**, in consideration of the mutual covenants expressed herein, it is agreed as follows:

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NO. 27433  
Filed with the Secretary of State  
Date Filed: 03/28/05  
  
Secretary of State

By: 

The estimated costs are as follows:

<b>Construction Tracs No: H6348 01C</b>	
Estimated Federal-aid funds @ 94.3%:	\$345,000.00
Estimated State funds @ 5.7 %	<u>\$ 21,000.00</u>
<b><i>Total Estimated Cost of the Project</i></b>	<b><i>\$367,000.00</i></b>

## **II. SCOPE OF WORK**

### **1. The State Will:**

a. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction.

b. Construct the Project approved by FHWA, if such funds are available for construction. Be the designated authorized agent with the consent of both Cities and the FHWA and proceed to advertise for, receive and open bids with the aid and consent of the Cities and the FHWA. Enter into a contract(s) with a firm(s) to whom the award is made with the concurrence of the FHWA. Enter into a Project Agreement with FHWA on behalf of both Cities to perform, complete, accept and pay for in accordance with instructions and requirements of both Cities and the Arizona Department of Transportation. Request the maximum federal funds available including construction, engineering and administration costs.

c. Prepare plans, specifications and an estimate for the Project and will submit them to both Cities for comments as appropriate. The Project will be constructed by the State using State and Federal Funds.

d. Be responsible for any design consultant and contractor claims for additional compensation caused by Project delays attributable to the State.

e. Upon completion of the Project, continue to provide maintenance for the fence and bridge along 6th Avenue and the I-10.

f. Not be obligated to maintain the sidewalk, should either City fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

g. Construct a section of the sidewalk, within existing public right-of-way shown on Exhibit A, without the necessity of obtaining additional rights or approvals or the necessary temporary construction easement permit.

### **2. The Cities Will:**

a. Review the design documents required for construction of the Project, and provide comments to the State as appropriate.

b. Allow the State to construct a section of the sidewalk, on both existing public Cities right-of-way shown on Exhibit A, without the necessity of obtaining additional rights or approvals or the necessary temporary construction easement permit.

c. Upon satisfactory completion of construction, approve and accept the Project, provide for cost and as an annual item in both Cities' budget maintain the sidewalks and all repairs. The City of South Tucson will be responsible for the maintenance and repair of the sidewalks north of the I-10 / Sixth Avenue Bridge and the City of Tucson will be responsible for maintenance and repair of the sidewalks south of the I-10 / Sixth Avenue Bridge.

d. Maintenance will consist of keeping the sidewalk surface and surrounding areas free of all debris, undesirable weeds, grasses, trash and litter. The sidewalk surfaces will be repaired and replaced as necessary to correct trip hazards and any erosion around the sidewalk will be maintained to the final grade at the completion of the Project. Maintenance shall also include repair or replacement of sidewalk signage constructed with the Project at both Cities' expense.

e. Be obligated to incur the cost increase of said work due to unforeseen conditions or circumstances required by a change in the extent or scope of the work called for by either City in this Agreement; any such changes require the prior approval of the State.

f. Be responsible for any design consultant and contractor claims for additional compensation caused by Project delays solely attributable to either City.

g. Conduct all maintenance work in a manner to minimize traffic congestion and interference with through traffic. All traffic control will meet the requirements of the Arizona Department of Transportation's "Uniform Traffic Control Manual".

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion and reimbursements; provided herein. However, both Cities will provide perpetual maintenance for the sidewalks. This Agreement may be cancelled at any time prior to the award of a Project construction contract, upon (30) thirty-days written notice to all parties. The State shall in no way be obligated to maintain said Project should either City fail to budget or provide for proper maintenance as set forth in this Agreement.

2. The parties to this Agreement agree that the State of Arizona shall be indemnified and held harmless by both Cities for vicarious liability of the State as a result of entering into this Agreement. Each party to this contract is responsible for its own negligence.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes Sections 38-511.

5. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Sections 12-1518.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

10. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17th Avenue, Mail Drop 616E  
Phoenix, AZ 85007 FAX (602) 712-7424

Engineering Division  
Andrew McGovern  
P.O. Box 27210  
Tucson, AZ 85726-7210

Transportation Director  
Richard G. Salaz  
1601 S. 6th Avenue  
South Tucson, AZ 85713

11. It is understood and agreed to that this Agreement may be amended in writing when deemed necessary by all parties.


12. Pursuant to Arizona Revised Statutes, Section 11-952 (D), attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written

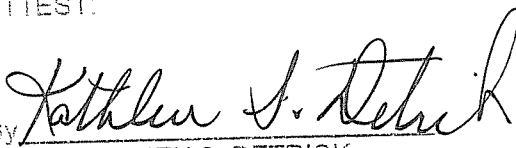
THE CITY OF TUCSON

By   
ROBERT E. WALKUP  
Mayor

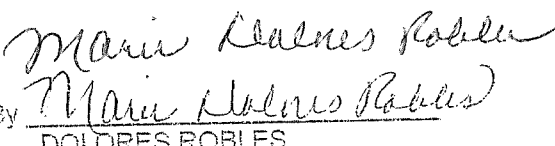
THE CITY OF SOUTH TUCSON

By   
SHIRLEY A. VILLEGAS  
Mayor

ATTEST:

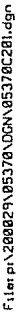
By   
KATHALEEN S. DETRICK  
Tucson City Clerk March 1, 2005

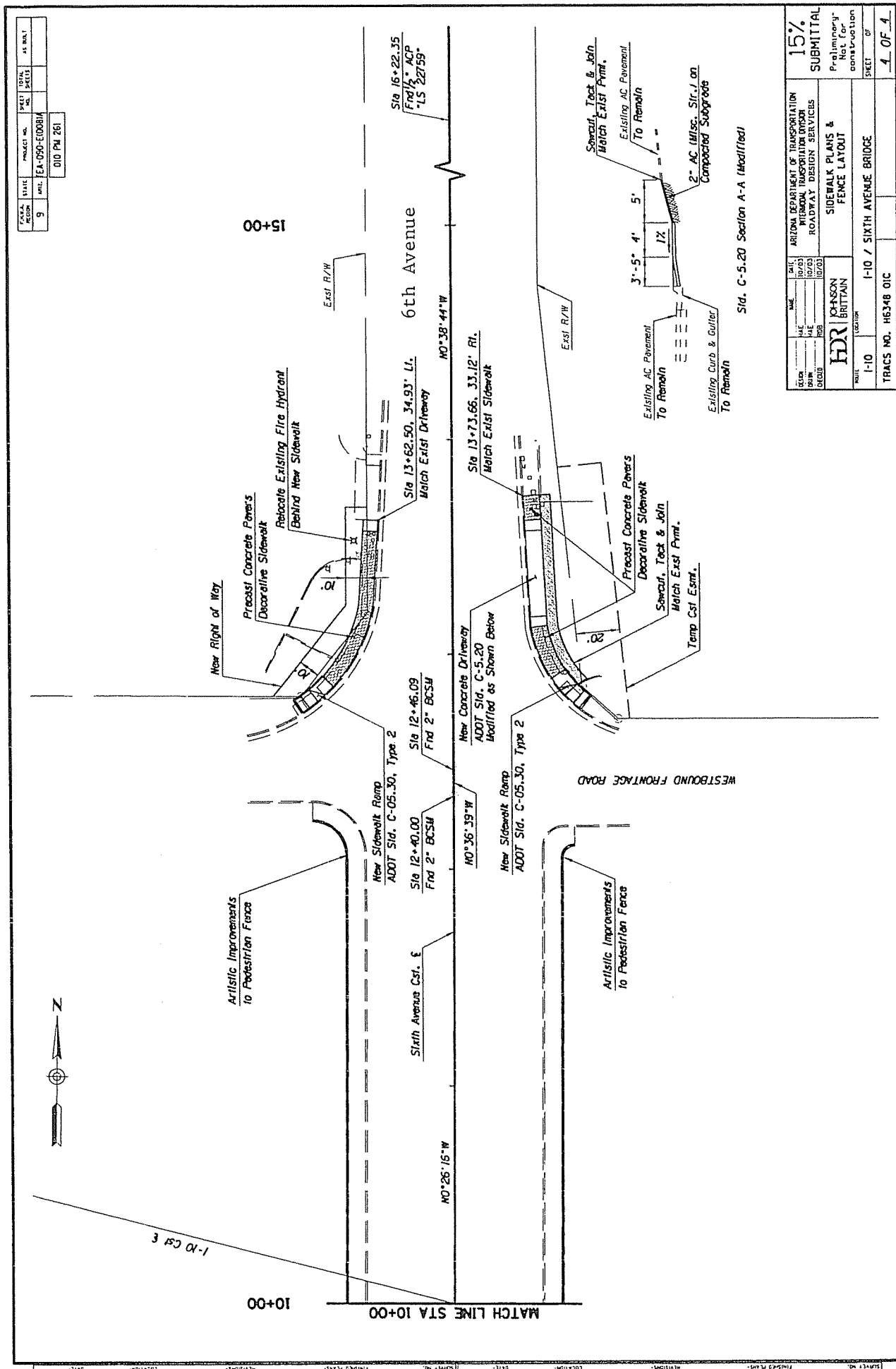
ATTEST:

By   
DOLORES ROBLES  
South City Clerk

STATE OF ARIZONA  
Department of Transportation

By   
SUSAN TELLEZ  
Contract Administrator



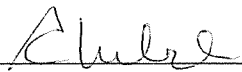


APPROVAL OF THE CITY OF TUCSON  
APPROVAL OF THE CITY OF SOUTH TUCSON

I have reviewed the above referenced proposed Intergovernmental Agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION and THE CITY OF SOUTH TUCSON and THE CITY OF TUCSON and declare this Agreement to be in proper form and within the powers and authority granted to the Cities under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

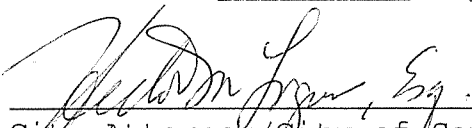
Approved as to form:

Dated this 4 day of Feb, 2005.

  
City Attorney/City of Tucson

Approved as to form:

Dated this 25<sup>th</sup> day of January, 2005.

  
City Attorney/City of South Tucson  
Hector Figueroa

## CITY OF SOUTH TUCSON RESOLUTION NO. 05-03

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A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SOUTH TUCSON, ARIZONA, APPROVING THE INTERGOVERNMENTAL AGREEMENT ["IGA"] FOR STATE CONSTRUCTION PROJECT ALONG 6<sup>TH</sup> AVENUE AND I-10 TO INCLUDE FENCE, BRIDGE AND SIDEWALKS BETWEEN THE CITY OF SOUTH TUCSON, ARIZONA ["CITY"] AND THE STATE OF ARIZONA ACTING THROUGH ITS DEPARTMENT OF TRANSPORTATION ["STATE"] AND AUTHORIZING EXECUTION OF THIS RESOLUTION, FOR THE PURPOSE OF AUTHORIZING THE MAYOR OF THE CITY OF SOUTH TUCSON TO EXECUTE SAID "IGA" AND DECLARING AN EMERGENCY TO EXIST.

WHEREAS, the "CITY" and the "STATE" wish to enter into an "IGA" pursuant to ARS §§ 11-951 THROUGH 11-954; and

WHEREAS, the "STATE" is currently planning on undertaking a construction project on 6<sup>th</sup> Avenue and I-10 and desires to enter into an "IGA" with the City of South Tucson and the City of Tucson to accomplish the planned \$367,000.00 project; and

WHEREAS, the Parties desire to have this item presented to the South Tucson Mayor and City Council at its next regular meeting on Monday, January 10, 2005; and

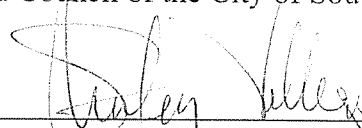
WHEREAS, the Mayor and Council of the City of South Tucson have determined that it is in the best interest of the CITY and its residents to enter into an "IGA" with the STATE for the CITY's maintenance of the sidewalks and all repairs thereafter; and

WHEREAS, it is necessary for the preservation of the peace, health, and safety of the City of South Tucson, Arizona, that an emergency be declared to exist, and that this Resolution be effective immediately upon its passage and adoption.

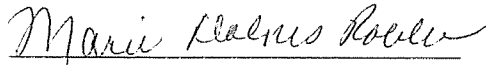
BE IT RESOLVED by the Mayor and Council of the City of South Tucson, Arizona, that the City hereby gives formal approval for the execution of said "IGA" and empowers the Mayor of the City of South Tucson to execute said document.

BE IT FURTHER RESOLVED by the Mayor and Council of the City of South Tucson, Arizona, that, due to an existing emergency, the immediate effectiveness of this Resolution is necessary to preserve the peace, health, and safety of the City of South Tucson, Arizona, and this Resolution shall therefore be effective upon its passage and adoption.

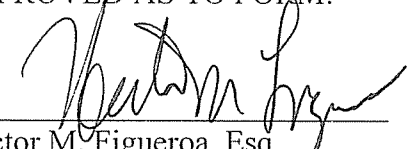
PASSED AND ADOPTED by the Mayor and Council of the City of South Tucson,  
Arizona, this 10<sup>th</sup> day of January, 2003.

  
\_\_\_\_\_  
Mayor Shirley A. Villegas

ATTEST:

  
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Hector M. Figueroa, Esq.  
City Attorney

CITY OF TUCSON  
SECRETARY OF STATE  
INTERGOVERNMENTAL AGREEMENT (IGA) INFORMATION SUMMARY FORM

This form is to be completed and attached to each Intergovernmental Agreement submitted for filing with the Secretary of State.

IGA BETWEEN THE CITY OF TUCSON AND Arizona Department of Transportation (ADOT) for the Maintenance of the Approach Sidewalks on Sixth Avenue South of the I-10 Bridge following Completion of State-funded Improvements.

DATE March 1, 2005

CONTRACT NUMBER City of Tucson - 0429-05 ADOT-KR04-1512TRN

IS THIS AN ORIGINAL CONTRACT? Yes

IF AMENDMENT, FILE DATE OF ORIGINAL CONTRACT N/A

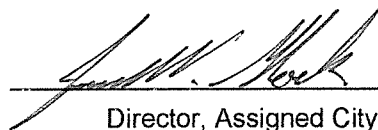
IF AMENDMENT, SECRETARY OF STATE ORIGINAL FILE NUMBER N/A

EXPIRATION DATE OF CONTRACT None

IF NO EXPIRATION DATE, IS CONTRACT INDEFINITELY ONGOING? Yes

OTHER PROVISION FOR EXPIRATION? None

ORIGINAL COPIES MUST HAVE ORIGINAL SIGNATURES

  
\_\_\_\_\_  
Director, Assigned City Department

ADOPTED BY THE  
MAYOR AND COUNCIL

March 1, 2005

RESOLUTION NO. 20015

RELATING TO INTERGOVERNMENTAL AGREEMENTS; AUTHORIZING AND APPROVING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF TUCSON, AND SOUTH TUCSON AND THE ARIZONA DEPARTMENT OF TRANSPORTATION FOR MAINTENANCE OF THE APPROACH SIDEWALKS ON SIXTH AVENUE SOUTH OF THE I-10 BRIDGE FOLLOWING COMPLETION OF STATE-FUNDED IMPROVEMENTS; AND DECLARING AN EMERGENCY.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

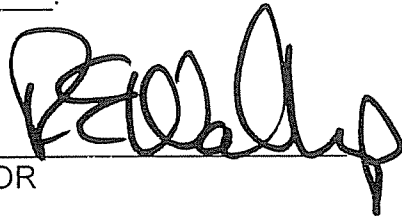
Section 1. The Intergovernmental Agreement between the City of Tucson and South Tucson and the Arizona Department of Transportation for maintenance of the approach sidewalks on Sixth Avenue south of the I-10 bridge following completion of state-funded improvements, which is attached to this resolution as Exhibit A, is hereby authorized and approved.

Section 2. The Mayor is hereby authorized and directed to execute, and the City Clerk is hereby authorized and directed to attest to, any and all documents necessary to effectuate the above-contemplated transaction for and on behalf of the City of Tucson.

Section 3. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this resolution.

Section 4. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this resolution become immediately effective, an emergency is hereby declared to exist and this resolution shall be effective immediately upon its passage and adoption.

PASSED, ADOPTED AND APPROVED BY THE MAYOR AND COUNCIL  
OF THE CITY OF TUCSON, ARIZONA, March 1, 2005.

  
MAYOR

ATTEST:


  
CITY CLERK

APPROVED AS TO FORM:

  
CITY ATTORNEY

REVIEWED BY:

  
CITY MANAGER

  
EU/tme  
02/03/2005 11:34 AM

*Certificate of Clerk*  
● *City of Tucson* ●

*State of Arizona*  
*County of Pima*      } <sup>ss</sup>

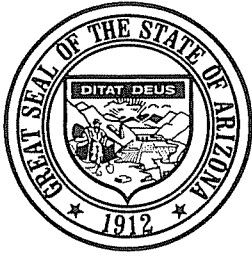
*I, Kathleen S. Detrick, the duly appointed and qualified City Clerk of the City of Tucson, Arizona, do hereby certify that the foregoing is a true and correct copy of Resolution No. 20015 which was passed and adopted by the Mayor and Council of the City of Tucson, Arizona, at a meeting held on March 1, 2005 at which a quorum was present.*

*In Witness Whereof, I have hereunto set my hand and affixed the seal of the City of Tucson, Arizona on March 7, 2005.*

*Total of 2 page(s) certified.  
(Exhibit A not included.)*

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*City Clerk*



ATTORNEY GENERAL  
CIVIL DIVISION  
TRANSPORTATION SECTION

MEMORANDUM

Jeffrey T. Murray  
Assistant Attorney General

Direct: (602) 542-8859  
Fax: (602) 542-3646


**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR04-1512TRN (**JPA 04-105**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED March 16<sup>th</sup>, 2005.

TERRY GODDARD  
Attorney General

  
JEFFREY T. MURRAY  
Assistant Attorney General  
Transportation Section